

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
v.) **Case No. 05-cv-329-GKF(SAJ)**
)
TYSON FOODS, INC., et al.,)
)
 Defendants.)

**STATE OF OKLAHOMA'S RESPONSE TO DEFENDANTS'
MOTION TO EXPAND THE TIME TO RESPOND TO THE STATE'S
MOTION TO EXPAND THE DISCOVERY PERIOD**

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State") responds to "Defendants' Opposed Joint Motion and Integrated Brief in Support Thereof to Expand the Time to Respond to State of Oklahoma's Motion to Expand the Discovery Period (DKT #1418)" [DKT # 1438] as follows:

1. Consistent with the Court's guidance, on December 21, 2007, the State filed a motion to expand the temporal limit on certain document discovery in this case provided in this Court's July 6, 2007 Order. *See, e.g.*, July 6, 2007 Order, p. 2 [DKT #1207]; Oct. 24, 2007 Order, p. 7 [DKT. #1336].

2. While both sides acknowledge that this is an important issue, it was nonetheless contemplated that it would be handled on a normal briefing cycle. As the Court explained at the September 27, 2007 hearing: "Depending upon when these plaintiffs get their motion filed, then defendants are going to have 18 days to respond. So if you file your motion, we will find [a]

date and set it down and give everyone the opportunity with the normal briefing cycle." Sept. 27, 2007 Hearing Transcript, 227:20-24.

3. Indeed, it is precisely because of the importance of this issue that it needs to be decided expeditiously and not wait until after the preliminary injunction issues have been addressed, as Defendants suggest in their Motion. The disclosure date for certain of the State's experts is scheduled for April 1, 2008. *See* DKT # 1376. Were the briefing and hearing on this matter delayed until after the preliminary injunction proceedings, the State would likely not begin receiving necessary discovery until after April 1, 2008, thus severely prejudicing the State in its trial preparation.

4. It would pose no undue burden on Defendants to respond to the State's Motion within the 18 days contemplated by the Local Civil Rules (or within a minimal two week extension). Defendants have nearly 40 attorneys who have appeared in this action on their behalf. Surely they can devote the necessary resources to this issue while also preparing their response to the State's Preliminary Injunction Motion. This is not, after all, a mini-trial. It is a straightforward discovery motion as to whether discovery on certain matters going back more than five years is relevant. Presumably at the time they interposed their temporal objections to the State's discovery, Defendants had a factual basis for those objections. It is time, therefore, for Defendants to present that factual basis. It should not, as Defendants suggest, "require extensive consultation with clients and expert witnesses."

5. Contrary to Defendants' suggestion in their papers, no real efforts by Defendants to meet and confer on this matter occurred. Rather, there was simply a letter from one defendant -- Cargill -- asking that the State withdraw its Motion or postpone it until after the preliminary injunction. *See* Exhibit 1. This the State refused to do. *See* Exhibit 2. Had Defendants

suggested meeting and conferring on a reasonable extension of time -- *e.g.*, two weeks -- the State would have readily engaged in discussions. However, an extension of more than two weeks on this straightforward motion is not only unnecessary, but also would severely prejudice the State in its trial preparations.

WHEREFORE, in light of the foregoing, Defendants' Motion for an extension of time should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2008, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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